

**BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Andrew C. Gilbert (deceased)  
Application No. : 10/042,371 Confirmation No. : 6761  
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For : CREATING AND TRADING DYNAMIC SECURITIES  
Group Art Unit : 3691  
Examiner : Chuks N. Onyezia

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Commissioner for Patents  
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**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

Sir:

This is an appeal from the decision of Examiner Chuks N. Onyezia, Group Art Unit 3691, in the Final Office Action of February 20, 2009 (hereinafter "Final Action"), rejecting claims **13-17, 21-22, 25-26, 28, 42-46, and 48-80** in the present application.<sup>1</sup> A Pre-Appeal Brief Conference Request and a Notice of Appeal were filed on April 22, 2009. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on June 29, 2009.

Applicant herewith requests a five-month extension of time, which extends the time to file this paper to December 29, 2009.

The Commissioner is hereby authorized to charge (i) the Appeal Brief filing fee as set forth in 37 C.F.R. § 41.20(b)(2) of \$540.00, (ii) and the five-month extension of time fee as set forth in 37 C.F.R. § 1.17(a)(5) of \$2350.00, as well as any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-3938.

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<sup>1</sup> Dependent claim 18 was canceled by Applicant's Paper of September 8, 2008. For purposes of clarification, it is noted that the "Office Action Summary" of the Final Action designates claim 18 as pending and rejected. However, the remainder of the Final Action properly designates claim 18 as canceled.

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**1. REAL PARTY IN INTEREST**

The real party in interest of the present application is BGC Partners, Inc., a corporation organized and existing under the laws of the State of Delaware, U.S.A., and having a place of business at 499 Park Avenue, New York, NY 10022.

2. **RELATED APPEALS AND INTERFERENCES**

There are no known related appeals or interferences.

**3. STATUS OF CLAIMS**

The following claims are pending and stand rejected in the present application:

- Independent claims **14, 25, and 43.**
- Dependent claims **13, 15-17, 21-22, 26, 28, 42, 44-46, and 48-80.**

The following claims are being appealed:

- Independent claims **14, 25, and 43.**
- Dependent claims **13, 15-17, 21-22, 26, 28, 42, 44-46, and 48-80.**

The following claims were previously cancelled:

- Claims **1-12, 18-20, 23-24, 27, 29-41, and 47.**



**4. STATUS OF AMENDMENTS**

No amendments have been filed after the Final Action of February 20, 2009.

## 5. SUMMARY OF CLAIMED SUBJECT MATTER

### 5.1. Independent Claim 14

Independent claim **14** is directed to a method that comprises the steps of: displaying a plurality of assets to a user via a first computing device, *see, e.g., Specification paragraphs [0017], [0028], and [0031]; FIG. 2, and FIG. 3 element 302*, receiving from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets, *see, e.g., Specification paragraphs [0017], [0029], and [0031]; FIG. 2, and FIG. 3 element 304*, and purchasing the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security, *see, e.g., Specification paragraphs [0017], [0029], [0030], and [0033]; FIG. 2, and FIG. 3 element 318*. The method further comprises the steps of a second computing device: comparing a rate of return of at least one of the assets within the dynamic security to a pre-determined target rate of return, *see, e.g., Specification paragraphs [0017] and [0032]; FIG. 3 element 312*, determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount, *see, e.g., Specification paragraphs [0017] and [0032]*, and based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the deviation, *see, e.g., Specification paragraphs [0017] and [0032]; FIG. 3 element 316*.

### 5.2. Independent Claim 25

Independent claim **25** is directed to an apparatus that comprises at least one processor and a memory, in which the memory stores instructions. *See, e.g., Specification paragraphs [0020] and [0022]-[0027]; FIG. 1*. The instructions, when executed by the at least one processor, make the at least one processor operable to: display a plurality of assets to a user via a first computing device; *see, e.g., Specification paragraphs [0017], [0028], and [0031]; FIG. 2, and FIG. 3 element 302*, receive from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets, *see, e.g., Specification paragraphs [0017], [0029], and [0031]; FIG. 2, and FIG. 3 element 304*, and purchase the selected assets to form a dynamic security, wherein the user

may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security, *see, e.g., Specification paragraphs [0017], [0029], [0030], and [0033]; FIG. 2, and FIG. 3 element 318.* The instructions, when executed by the at least one processor, further make the at least one processor operable to: compare a rate of return of the dynamic security to a pre-determined target rate of return, *see, e.g., Specification paragraphs [0017] and [0032]; FIG. 3 element 310,* determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least a pre-determined amount, *see, e.g., Specification paragraphs [0017] and [0032],* and based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation, *see, e.g., Specification paragraphs [0017] and [0032]; FIG. 3 element 314.*

### **5.3. Independent Claim 43**

Independent claim 43 is directed to an apparatus that comprises at least one processor and a memory, in which the memory stores instructions. *See, e.g., Specification paragraphs [0020] and [0022]-[0027]; FIG. 1.* The instructions, when executed by the at least one processor, make the at least one processor operable to: display a plurality of assets to a user via a first computing device, *see, e.g., Specification paragraphs [0017], [0028], and [0031]; FIG. 2, and FIG. 3 element 302,* receive from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets, *see, e.g., Specification paragraphs [0017], [0029], and [0031]; FIG. 2, and FIG. 3 element 304,* and purchase the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security, *see, e.g., Specification paragraphs [0017], [0029], [0030], and [0033]; FIG. 2, and FIG. 3 element 318.* The instructions, when executed by the at least one processor, further make the at least one processor operable to: compare a rate of return of at least one of the assets within the dynamic security to a pre-determined target rate of return, *see, e.g., Specification paragraphs [0017] and [0032]; FIG. 3 element 312,* determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount, *see, e.g.,*

Specification paragraphs [0017] and [0032], and based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation, *see, e.g.,* Specification paragraphs [0017] and [0032]; FIG. 3 element 316.

**6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to be reviewed on appeal are whether:

- Independent claims **14, 25, and 43** and dependent claims **13, 15-17, 21-22, 26, 28, 42, 44-46, and 48-80** are unpatentable under 35 U.S.C. §103(a) over Pritchard, U.S. Patent Applicant Publication No. 2002/0046154 (hereinafter “Pritchard”) in view of Lipper, U.S. Patent No. 7,487,122 (hereinafter “Lipper”).

## 7. ARGUMENT

### 7.1. Summary of Argument

#### 7.1.1. No *Prima Facie* Showing of Obviousness

Claims **13-17, 21-22, 25-26, 28, 42-46, and 48-80** are rejected under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, pp. 2-8. The Examiner fails to establish a *prima facie* case of obviousness of any of the claims.

Specifically, regarding independent claims **14** and **43**, the Examiner fails to show that all limitations recited by these claims are disclosed or suggested by the cited portions of Pritchard and Lipper. In addition, the Examiner fails to provide any evidence, or reasoning based on evidence, for a motivation to combine or modify the references in the manner the Examiner has proposed. With further regard to dependent claims **17, 46, 48, 52-53, 55, 57, 67, 71-72, 74, and 76** (which depend from independent claims **14** or **43**), the Examiner also fails to show that all limitations recited by these claims are disclosed or suggested by the cited portions of Pritchard and Lipper. With further regard to dependent claims **61** and **80** (which depend from independent claims **14** or **43**), the Examiner also does not explain how the Examiner deems the cited portions of Pritchard and Lipper to disclose several limitations recited by these claims and as such, fails to show that the cited portions of the references disclose or suggest all limitations recited by these claims. For at least these reasons, the Examiner fails to establish a *prima facie* case of obviousness of independent claims **14** and **43**, and of dependent claims **13, 15-17, 42, 44-46, 48-61, 67-80**, which depend there from.

Regarding independent claim **25**, the Examiner does not explain how the Examiner deems the cited portions of Pritchard and Lipper to disclose several limitations recited by this claim and as such, fails to show that the cited portions of the references disclose or suggest all limitations recited by this claim. In addition, the Examiner fails to provide any evidence, or reasoning based on evidence, for a motivation to combine or modify the references in the manner the Examiner has proposed. With further regard to dependent claims **28** and **62** (which depend from independent claim **25**), the Examiner also fails to show that all limitations recited by these claims are disclosed or suggested by the cited portions of Pritchard and Lipper. With further regard to dependent claims **63-65** (which depend from independent claim **25**), the Examiner also does not explain how the Examiner deems the cited portions of Pritchard and Lipper to disclose

several limitations recited by these claims and as such, fails to show that the cited portions of the references disclose or suggest all limitations recited by these claims. For at least these reasons, the Examiner fails to establish a *prima facie* case of obviousness of independent claim 25, and of dependent claims 21, 22, 26, 28, 62, and 63-66 which depend there from.

## **7.2. First Group: Independent Claim 14**

### **7.2.1. Legal Standard for Obviousness**

The initial burden of presenting a *prima facie* case of obviousness is upon the Examiner. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992). To reject claims under 35 U.S.C. § 103, an Examiner must show an unrebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974). If the Examiner fails to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned. In re Rijckaert, 9 F.3d 1531, 1532 (Fed. Cir. 1993); Novamedix Distrib. Ltd. V. Dickinson, 175 F.Supp. 2d 8, 9 (D.D.C. 2001). In addition, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference.

Graham v. Deere requires that there be motivation. Graham v. John Deere Co., 383 U.S. 1 (1966). This motivation does not exempt from the requirement of Lee and Zurko to have the finding be supported by substantial evidence. In re Lee, 277 F.3d 1338, 1342 (Fed. Cir. 2002); In re Zurko, 258 F.3d 1379, 1383-1386 (Fed. Cir. 2001). Thus, the Examiner must support with substantial evidence of record a factual finding of a suggestion or motivation to modify a reference. Novamedix Distrib., 175 F.Supp. 2d at 9; Zurko, 258 F.3d at 1383-1386; Lee, 277 F.3d at 1342.

Although the teachings, suggestions, or motivations need not always be written references, the obviousness test must proceed on the basis of *some* substantial evidence of record. See Ortho-McNeil Pharmaceutical v. Mylan Labs, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

An obviousness analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, however, the rejection of a patent on obviousness grounds cannot be sustained by mere conclusory statements. KSR Int'l Co. v. Teleflex, Inc., 127 S.Ct. 1727, 1741 (2007). There must be some articulated reasoning with some rational underpinning

to support a legal conclusion of obviousness. *Id.* A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *Id.* It can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed invention does because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known. *Id.* A fact finder must be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. *Id.* at 1742.

### **7.2.2. Rejection Under 35 U.S.C. § 103**

The Examiner rejects independent claim **14** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, pp. 3-5.

#### ***7.2.2.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

Independent claim **14** recites in part:

*... determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount ....*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim **14**. See Final Action, pp. 3-5. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 53-54, stating in part:

... determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return [by at] least a pre-determined amount (Lipper Col 6 Lns 53-54) examiner interprets Lipper does disclose displaying the determination of the return of a security based on being indexed by another security and that the rate of return deviates by at least 0.1 according to the decimal places listed....

Final Action, p. 4 (underlined emphasis added). Nowhere in the cited portion of Lipper does Lipper disclose or suggest the above limitations of claim **14**. Nor does the Examiner argue otherwise.

Lipper column 6, lines 53-54, referred to by the Examiner, together with surrounding text read as follows:



35	Latest Price	AMGEN	PHARMACIA
	% change in price vs 30 days	1	0.9
	% change in price vs 90 days	0	0
	% change in price vs 180 days	0	0
	% change in price vs 365 days	0	0
40	% change in price from 52 week high	0	0
	% change in price from 52 week low	0	0
	Average Daily Volume 90 days	0	0
	Market Capitalization (mm)	\$1	1.1
	Shares Outstanding (mm)	1	-1.5
	Annual Dividend (mm)	\$0	Infinity
	Dividend Yield (mm)	\$0	Infinity
45	Earnings Yield (mm)	\$1	1.5
	Per Share Book Value (mm)	\$1	3.5
	EPS (earnings per share)	\$1	1.5
	Sales	\$1	2.8
	EBITDA (earnings bef. income taxes)	\$0	0
50	Price/Book Value (mm)	1	0.3
	Price/Earnings (mm)	1	0.5
	Price/Sales (mm)	1	0.1
	Return on Assets	1	0.2
	Return on Equity	1	0.3
	Current Ratio (mm)	1	0.4
55	Debt/Equity (mm)	0	0
	Shares Short	0	0
	Short Ratio	0	0

Lipper, column 6, lines 35-58.

The above table of Lipper shows respective values for various security factors for two securities, AMGEN and PHARMACIA. Lipper, column 5, line 13 to column 6, line 58. In particular, the values for the various security factors for PHARMACIA are presented as ratios relative to respective security factors for AMGEN. *Id.*

In rejecting claim **14**, the Examiner does not explain what features of the cited portion of Lipper the Examiner deems correspond to the above-noted limitations of claim **14**. Final Action, p. 4. Nonetheless, it appears (and Applicant will proceed accordingly) that the Examiner may be equating the Return on Assets for PHARMACIA (or the Return on Equity for PHARMACIA) to the “*rate of return of the at least one asset*” of claim **14**, may be equating the Return on Assets for AMGEN (or the Return on Equity for AMGEN) to the “*predetermined target rate of return*” of claim **14**, and may be equating the value “0.1” to the “*predetermined amount*” of claim **14**. *Id.*

Even assuming, *arguendo*, that the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN, for example, “by at least 0.1 according to the decimal places listed,” as the Examiner appears to assert, nowhere in the cited portion of Lipper does Lipper disclose or suggest “*determining*” that the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN by at least 0.1. In other words, merely using 0.1 increments, as Lipper allegedly does in the above table, to *display* a value calculated from the Return on Assets for PHARMACIA and AMGEN is not and does not suggest “*determining*” that the Return on Assets for PHARMACIA and AMGEN deviate by at least that increment. Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above limitations of claim **14**. Furthermore, the cited portion of Lipper does not disclose or suggest such limitations of claim **14**.

Independent claim **14** further recites in part:

*... based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the deviation.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim **14**. See Final Action, pp. 3-5. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 35-58, which are reproduced and discussed above.

Nowhere in the cited portion of Lipper does Lipper disclose or suggest that based at least in part on determining that the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN, for example, by at least 0.1, providing to a user a notification of the deviation, as the Examiner appears to assert. At best, the cited portion of Lipper discloses calculating a value based on the Return on Assets for PHARMACIA and AMGEN, for example, and displaying/providing that value to a user *regardless* of what that value may be and in particular, *regardless* of whether the Return on Assets for PHARMACIA is determined to deviate from the Return on Assets for AMGEN by at least 0.1. In other words, merely using 0.1 increments, as Lipper allegedly does in the above table, to display a value calculated from the Return on Assets for PHARMACIA and AMGEN, for example, is not and does not suggest displaying/providing that value to a user based at least in part on having determined that the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN by at least 0.1. Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above noted “*providing...*” limitations of claim **14**. Furthermore, the cited portion of Lipper does not disclose or suggest such limitations of claim **14**.

Thus, the Examiner’s failure to show that all limitations of claim **14** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **14**.

**7.2.2.2. *No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.***

**SEPARATE ARGUMENT OF PATENTABILITY**

The Examiner concedes that Lipper fails to disclose the following limitations of claim 14:

*...purchasing the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security....*

Final Action, p. 5. Rather, the Examiner asserts that Pritchard discloses such limitations, further asserting that one skilled in the art would have known and desired to modify Pritchard to include alleged teachings of Lipper in order to perform the claimed invention for the following reason:

It would have been obvious to combine the teachings of Lipper with Pritchard for the purpose of facilitating a financial management system for administrating investment instruments that can be traded (see Pritchard Abstract).

*Id.* (underlined emphasis added).

Contrary to the Examiner's assertion, the alleged motivation proffered by the Examiner for modifying Pritchard to include alleged teachings of Lipper has no basis in the cited portion of Pritchard. All factual findings of the Patent and Trademark Office must be supported by substantial evidence. Since motivation to modify is a factual finding, it must be supported by some evidence.

In particular, contrary to the Examiner's assertion, the Abstract of Pritchard offers no teaching or suggestion to support the Examiner's alleged motivation to modify Pritchard to include alleged teachings of Lipper. Specifically, the Abstract of Pritchard reads as follows:

Financial management systems and methods for development and administration of investment trusts which may be traded as a securities are provided. These trusts may be based on underlying investment instruments optimally selected to provide dividends and equity, and the trusts value may reflect accrued investment income and maintenance expenses. The financial management systems and methods may receive input from the relevant markets of the underlying investment instrument products and dividend investments, and periodically evaluate and report the performance of the investment trust. The financial management systems

and methods may also permit investors in the trusts to redeem their ownership in the trust for cash or investment instruments of the trust. Pritchard, Abstract.

While the Abstract of Pritchard refers to a financial management system for administration of investment trusts which may be traded, the Abstract provides no discussion or suggestion of “facilitating” such a system, as the Examiner asserts, let alone any discussion or suggestion that alleged teachings of Lipper would “facilitat[e]” such a system. Thus, the Abstract of Pritchard does not provide any support for the Examiner’s alleged motivation.

The Examiner also fails to provide any other references or any other evidence for why one of ordinary skill in the art would wish to selectively modify Pritchard to include alleged teachings of Lipper. Final Action, pp. 3-5.

There also lacks any evidence in the record for why one of ordinary skill in the art would have, at the time of the invention, even known or desired to “facilitat[e] a financial management system for administrating investment instruments that can be traded,” as the Examiner alleges. *Id.* Again, there is no discussion or suggestion, whatsoever, in the Abstract of Pritchard of such a motivation.

Furthermore, even if a person of ordinary skill in the art did have the desire “to facilitat[e] a financial management system for administrating investment instruments that can be traded,” there is still no evidence that such a person would have sought to accomplish this goal by modifying Pritchard with alleged teachings of Lipper, as the Examiner alleges. *Id.* at 5. There is no reasoning provided why the latter would follow from the former, and the two would only appear disconnected and unrelated to the person of ordinary skill.

Since there has been no evidence offered, and no reasoning based on evidence, for a motivation to combine or modify the references in the manner the Examiner has proposed, Applicant cannot address the reasoning behind the obviousness rejection, and a *prima facie* showing of obviousness has not been made for claim **14**.

### **7.3. Second Group: Independent Claim 43**

#### **7.3.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects independent claim **43** under 35 U.S.C. § 103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

**7.3.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.**

**SEPARATE ARGUMENT OF PATENTABILITY**

Independent claim **43** recites in part:

*... determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount; and*

*based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation.*

In rejecting claim **43**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Claim **43** recites limitations that are similar to the limitations of independent claim **14**. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **14**, as set forth at pages 3-5 of the Final Action, to also apply to claim **43**.

Similar limitations as those noted above for claim **43** are discussed under Subsection **7.2.2.1** for claim **14**. Accordingly, Subsection **7.2.2.1** is repeated herein.

Because claim **43** recites limitations similar to claim **14**, claim **43** is allowable for at least the same reasons stated under Subsection **7.2.2.1** for claim **14**. Specifically, the Examiner’s failure to show that all limitations of claim **43** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **43**.

**7.3.1.2. No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.**

**SEPARATE ARGUMENT OF PATENTABILITY**

Independent claim **43** further recites in part:

*... purchase the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least*

*one asset from the dynamic security and trade the divided asset separately from the dynamic security....*

Similar limitations as those noted above for claim **43** are discussed under Subsection **7.2.2.2** for claim **14**. Accordingly, Subsection **7.2.2.2** is repeated herein.

Claim **43** is allowable for at least the same reasons stated under Subsection **7.2.2.2**. Specifically, since there has been no evidence offered, and no reasoning based on evidence, for a motivation to combine or modify the references in the manner the Examiner has proposed, a *prima facie* showing of obviousness has not been made for claim **43**.

#### **7.4. Third Group: Dependent Claim 17**

##### **7.4.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **17** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 6.

*7.4.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **17** recites in part:

*...for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the respective deviation.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim **17**. Final Action, p. 6. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 35-58. *Id.* Nowhere in the cited portion of Lipper does Lipper disclose or suggest the above limitations of claim **17**. Nor does the Examiner argue otherwise.

Lipper column 6, lines 35-58 are reproduced and discussed under Subsection **7.2.2.1**. In rejecting claim **17**, other than merely referring to this portion of Lipper, the Examiner does not explain how the Examiner deems Lipper to disclose the above limitations of claim **17**. Final Action, p. 6. Applicant will proceed under the assumption that, as similarly discussed under Subsection **7.2.2.1**, the Examiner in rejecting claim **17** is equating, for example, the Return on

Assets for PHARMACIA to the “*rate of return*” of an asset of claim **17**, is equating the Return on Assets for AMGEN to the “*predetermined target rate of return*” of claim **17**, and is equating the value 0.1 to the “*predetermined amount*” of claim **17**. See Final Action, pp. 4-5.

As similarly discussed under Subsection **7.2.2.1**, nowhere in the cited portion of Lipper does Lipper disclose or suggest that for an asset, such as PHARMACIA, for which the Return on Assets deviates from the Return on Assets for AMGEN by at least 0.1, providing to the user a notification of the deviation, as the Examiner appears to assert. At best, the cited portion of Lipper discloses calculating a value for PHARMACIA based on the Return on Assets for PHARMACIA and AMGEN, for example, and displaying/providing that value to a user *regardless* of what that value may be and in particular, *regardless* of whether the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN by at least 0.1. In other words, merely using 0.1 increments, as Lipper allegedly does in the cited portion of Lipper, to display a calculated value for PHARMACIA is not and does not suggest displaying/providing that value to the user when the Return on Assets for PHARMACIA deviates from the Return on Assets for AMGEN by at least 0.1. Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above limitations of claim **17**. Furthermore, the cited portions of Lipper do not disclose or suggest such limitations of claim **17**.

Thus, the Examiner’s failure to show that all limitations of claim **17** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **17**.

## **7.5. Fourth Group: Dependent Claim 46**

### **7.5.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **46** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

**7.5.1.1. *No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **46** recites in part:

*...for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the respective deviation.*

In rejecting claim **46**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Claim **46** recites limitations that are similar to the limitations of dependent claim **17**. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **17**, as set forth at page 6 of the Final Action, to also apply to claim **46**.

Similar limitations as those noted above for claim **46** are discussed under Subsection 7.4.1.1 for claim **17**. Accordingly, Subsection 7.4.1.1 is repeated herein.

Because claim **46** recites limitations similar to claim **17**, claim **46** is allowable for at least the same reasons stated under Subsection 7.4.1.1 for claim **17**. Specifically, the Examiner’s failure to show that all limitations of claim **46** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **46**.

**7.6. Fifth Group: Dependent Claim 48**

**7.6.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **48** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 6.

**7.6.1.1. *No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **48** recites in part:



... wherein the user specifies the pre-determined amount.

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim 48. Final Action, p. 6. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 21-29. *Id.* Nowhere in the cited portion of Lipper does Lipper disclose or suggest the above limitations of claim 48. Nor does the Examiner argue otherwise.

Lipper column 6, lines 21-29, referred to by the Examiner, reads as follows:

However, by placing the cursor on either of the two selected stocks and right-clicking, the user is given the drop-down menu option of designating that stock as the index stock versus "pivot" stock. This way, as shown in FIG. 3(a-f) if the user selects AMGEN as the index stock and, additionally, presses the RELATIVE VALUES button at top, AMGEN becomes the index and all of its values become the relative benchmark for determining the index numbers of all other displayed stocks....

Lipper, column 6, lines 21-29.

In the rejection, other than merely referring to the above portion of Lipper, the Examiner does not explain how the Examiner deems Lipper to disclose the above limitations of claim 48. Final Action, p. 6. In particular, the Examiner never explains what feature of the above portion of Lipper the Examiner deems to be the "*pre-determined amount*" of claim 48. *Id.* Because the Examiner fails to address the limitations of claim 48, Applicant cannot address the obviousness rejection. Furthermore, Applicant is not required to guess at how the Examiner deems the above portion of Lipper to disclose the limitations of claim 48. *See e.g., Ex parte Schricker*, 56 USPQ2d 1723, 1725 (Bd. Pat. App. & Interf. 2000) (applicants are not required to "guess as to the basis of the rejection").

Nonetheless, Applicant notes that in discussing independent claim 14, from which claim 48 depends, the Examiner appears to equate the "*pre-determined amount*" of the claims to the value "0.1." *See Final Action p. 4* ("... that the rate of return deviates by at least 0.1 according to the decimal places listed") and Subsection 7.2.2.1. However, nowhere in the above portion of Lipper is any reference made to a user specifying the value "0.1," let alone to a user specifying the "decimal places listed" in displaying/presenting values.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above limitations of claim **48**. Furthermore, the cited portion of Lipper does not disclose or suggest such limitations of claim **48**.

Thus, the Examiner's failure to show that all limitations of claim **48** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **48**.

## **7.7. Sixth Group: Dependent Claim 67**

### **7.7.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **67** under 35 U.S.C. § 103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.7.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

## **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **67** recites in part:

*... wherein the user specifies the pre-determined amount.*

In rejecting claim **67**, the Examiner asserts that the claim is "rejected using logic similar to that used in the rejection of claims 13-17." Final Action, p. 8. Applicant notes that claims **13-17** do not recite the limitations of claim **67**. Accordingly, "the logic ... used in the rejection of claims 13-17" does not include any discussion of the limitations of claim **67**. Furthermore, regarding the Examiner's statement that claim **67** is rejected using logic "similar" to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that claim **67** recites limitations that are similar to the limitations of claim **48**. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **48**, as set forth at page 6 of the Final Action, to also apply to claim **67**.

Similar limitations as those noted above for claim **67** are discussed under Subsection **7.6.1.1** for claim **48**. Accordingly, Subsection **7.6.1.1** is repeated herein.

Because claim 67 recites limitations similar to claim 48, claim 67 is allowable for at least the same reasons stated under Subsection 7.6.1.1 for claim 48. Specifically, the Examiner's failure to show that all limitations of claim 67 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 67.

## **7.8. Seventh Group: Dependent Claim 52**

### **7.8.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 52 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 7.

*7.8.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

## **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 52 recites in part:

*... based at least in part on purchasing the selected assets, displaying the purchased assets to the user via the first computing device, wherein the purchased assets are displayed to the user so as to show that the purchased assets are part of the dynamic security.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim 52. Final Action, p. 7. Rather, the Examiner asserts that Lipper discloses such limitations at Figure 4 and column 7, lines 3-5. *Id.* Nowhere in the cited portions of Lipper does Lipper disclose or suggest the above limitations of claim 52. Nor does the Examiner argue otherwise.

Lipper column 7, lines 3-5, referred to by the Examiner, reads as follows:

As shown in FIG. 4, the user can select the array of values to be considered in each of the screens shown in FIGS. 2-3 simply by right-clicking the mouse and making the appropriate selections....

Lipper, column 7, lines 3-6.

"[S]elect[ing] the array of values" as discussed in Lipper column 7, lines 3-5 is not, and does not suggest, that assets are displayed to a user "*based at least in part on purchasing the*

*selected assets.*” Similarly, while the screen shown in Lipper Figure 4 appears to show a set of assets (e.g., Aastrom Biosciences, Abgenix Inc. etc.) that have been selected by a user, nowhere in Lipper Figure 4 (nor Lipper column7 lines 3-5) does Lipper disclose or suggest that such assets are displayed to the user “*based at least in part on purchasing the selected assets.*” Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portions of Lipper disclose or suggest the above limitations of claim 52. Furthermore, the cited portions of Lipper do not disclose or suggest such limitations of claim 52.

Thus, the Examiner’s failure to show that all limitations of claim 52 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 52.

## **7.9. Eighth Group: Dependent Claim 71**

### **7.9.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 71 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.9.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

## **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 71 recites in part:

*... based at least in part on purchasing the selected assets, display the purchased assets to the user via the first computing device, wherein the purchased assets are displayed to the user so as to show that the purchased assets are part of the dynamic security.*

In rejecting claim 71, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Applicant notes that claims 13-17 do not recite the limitations of claim 71. Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the limitations of claim 71. Furthermore, regarding the Examiner’s statement that claim 71 is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not

required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that claim 71 recites limitations that are similar to the limitations of claim 52. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim 52, as set forth at page 7 of the Final Action, to also apply to claim 71.

Similar limitations as those noted above for claim 71 are discussed under Subsection 7.8.1.1 for claim 52. Accordingly, Subsection 7.8.1.1 is repeated herein.

Because claim 71 recites limitations similar to claim 52, claim 71 is allowable for at least the same reasons stated under Subsection 7.8.1.1 for claim 52. Specifically, the Examiner's failure to show that all limitations of claim 71 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 71.

#### **7.10. Ninth Group: Dependent Claim 53**

##### **7.10.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 53 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, pp. 7-8.

*7.10.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 53 recites in part:

*... wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises determining that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim 53. Final Action, pp. 7-8. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 52-55. *Id.* Nowhere in the cited portion of Lipper does Lipper disclose or suggest the above limitations of claim 53. Nor does the Examiner argue otherwise.

Lipper column 6, lines 52-55 is reproduced and discussed under Subsection 7.2.2.1. In rejecting claim **53**, other than merely referring to this portion of Lipper, the Examiner does not explain how the Examiner deems Lipper to disclose the above limitations of claim **53**. Final Action, pp. 7-8. Applicant will proceed under the assumption that, as similarly discussed under Subsection 7.2.2.1, the Examiner in rejecting claim **53** is equating, for example, the Return on Assets for PHARMACIA to the “*rate of return of the at least one asset*” of claim **53**, is equating the Return on Assets for AMGEN to the “*predetermined target rate of return*” of claim **53**, and is equating the value 0.1 to the “*predetermined amount*” of claim **53**. See Final Action, p. 4.

Even assuming, *arguendo*, that the Return on Assets for PHARMACIA could exceed the Return on Assets for AMGEN by at least 0.1, as the Examiner appears to assert, nowhere in the cited portion of Lipper does Lipper disclose or suggest “*determining*” that the Return on Assets for PHARMACIA exceeds the Return on Assets for AMGEN by at least 0.1. In other words, merely using 0.1 increments, as Lipper allegedly does in the cited portion of Lipper, to display a value calculated from the Return on Assets for PHARMACIA and AMGEN is not and does not suggest “*determining*” that the Return on Assets for PHARMACIA “*exceeds*” the Return on Assets for AMGEN by at least that increment. Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above limitations of claim **53**. Furthermore, the cited portion of Lipper does not disclose or suggest such limitations of claim **53**.

Thus, the Examiner’s failure to show that all limitations of claim **53** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **53**.

## **7.11. Tenth Group: Dependent Claim 72**

### **7.11.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **72** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

***7.11.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **72** recites in part:

*... wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount.*

In rejecting claim **72**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Applicant notes that claims **13-17** do not recite the limitations of claim **72**. Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the limitations of claim **72**. Furthermore, regarding the Examiner’s statement that claim **72** is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that claim **72** recites limitations that are similar to the limitations of claim **53**. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **53**, as set forth at pages 7-8 of the Final Action, to also apply to claim **72**.

Similar limitations as those noted above for claim **72** are discussed under Subsection **7.10.1.1** for claim **53**. Accordingly, Subsection **7.10.1.1** is repeated herein.

Because claim **72** recites limitations similar to claim **53**, claim **72** is allowable for at least the same reasons stated under Subsection **7.10.1.1** for claim **53**. Specifically, the Examiner’s failure to show that all limitations of claim **72** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **72**.

**7.12. Eleventh Group: Dependent Claim 55**

**7.12.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **55** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, pp. 7-8.

***7.12.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 55 recites in part:

*... wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises determining that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim 55. Final Action, pp. 7-8. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 52-55. *Id.* Nowhere in the cited portion of Lipper does Lipper disclose or suggest the above limitations of claim 55. Nor does the Examiner argue otherwise.

Lipper column 6, lines 52-55 is reproduced and discussed under Subsection **7.2.2.1**. Notably, in rejecting claim 55, other than merely referring to this portion of Lipper, the Examiner does not explain how the Examiner deems Lipper to disclose the above limitations of claim 55. Final Action, pp. 7-8. Applicant will proceed under the assumption that, as similarly discussed under Subsection **7.2.2.1**, the Examiner in rejecting claim 55 is equating, for example, the Return on Assets for PHARMACIA to the “rate of return of the at least one asset” of claim 55, is equating the Return on Assets for AMGEN to the “predetermined target rate of return” of claim 55, and is equating the value 0.1 to the “predetermined amount” of claim 55. See Final Action, p. 4.

Even assuming, *arguendo*, that the Return on Assets for AMGEN could exceed the Return on Assets for PHARMACIA by at least 0.1, as the Examiner appears to assert, nowhere in the cited portion of Lipper does Lipper disclose or suggest “determining” that the Return on Assets for AMGEN exceeds the Return on Assets for PHARMACIA by at least 0.1. In other words, merely using 0.1 increments, as Lipper allegedly does in the cited portion of Lipper, to display a value calculated from the Return on Assets for PHARMACIA and AMGEN is not and



does not suggest “determining” that the Return on Assets for AMGEN “exceeds” the Return on Assets for PHARMACIA by at least that increment. Nor does the Examiner argue otherwise.

Accordingly, the Examiner fails to show that the cited portion of Lipper discloses or suggests the above limitations of claim 55. Furthermore, the cited portion of Lipper does not disclose or suggest such limitations of claim 55.

Thus, the Examiner’s failure to show that all limitations of claim 55 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 55.

### **7.13. Twelfth Group: Dependent Claim 74**

#### **7.13.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 74 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.13.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 74 recites in part:

*... wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.*

In rejecting claim 74, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Applicant notes that claims 13-17 do not recite the limitations of claim 74. Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the limitations of claim 74. Furthermore, regarding the Examiner’s statement that claim 74 is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that claim 74 recites limitations that are similar to the limitations of

claim 55. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim 55, as set forth at pages 7-8 of the Final Action, to also apply to claim 74.

Similar limitations as those noted above for claim 74 are discussed under Subsection 7.12.1.1 for claim 55. Accordingly, Subsection 7.12.1.1 is repeated herein.

Because claim 74 recites limitations similar to claim 55, claim 74 is allowable for at least the same reasons stated under Subsection 7.12.1.1 for claim 55. Specifically, the Examiner's failure to show that all limitations of claim 74 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 74.

#### **7.14. Thirteenth Group: Dependent Claim 57**

##### **7.14.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 57 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 7.

*7.14.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 57 recites in part:

*... wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:*

*determining that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount; and*

*determining that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.*

In the Final Action, the Examiner makes no reference to Pritchard regarding these limitations of claim 57. Final Action, pp. 7-8. Rather, the Examiner asserts that Lipper discloses such limitations at column 6, lines 52-55. *Id.* Nowhere in the cited portion of Lipper does

Lipper disclose or suggest the above limitations of claim 57. Nor does the Examiner argue otherwise.

In particular, similar limitations as those noted above for claim 57 are discussed under Subsection 7.10.1.1 for claim 53 and Subsection 7.12.1.1 for claim 55. Accordingly, Subsection 7.10.1.1 and Subsection 7.12.1.1 are repeated herein.

Because claim 57 recites limitations similar to claim 53 and claim 55, claim 57 is allowable for at least the same reasons stated under Subsection 7.10.1.1 for claim 53 and/or Subsection 7.12.1.1 for claim 55. Specifically, the Examiner's failure to show that all limitations of claim 57 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 57.

#### **7.15. Fourteenth Group: Dependent Claim 76**

##### **7.15.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 76 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.15.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 76 recites in part:

*... wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:*

*to determine that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount; and*

*to determine that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.*

In rejecting claim 76, the Examiner asserts that the claim is "rejected using logic similar to that used in the rejection of claims 13-17." Final Action, p. 8. Applicant notes that claims 13-

**17** do not recite the limitations of claim **76**. Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the limitations of claim **76**. Furthermore, regarding the Examiner’s statement that claim **76** is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that claim **76** recites limitations that are similar to the limitations of claim **57**. As such, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **57**, as set forth at pages 7-8 of the Final Action, to also apply to claim **76**.

Similar limitations as those noted above for claim **76** are discussed under Subsection **7.14.1.1** for claim **57**. Accordingly, Subsection **7.14.1.1** is repeated herein.

Because claim **76** recites limitations similar to claim **57**, claim **76** is allowable for at least the same reasons stated under Subsection **7.14.1.1** for claim **57**. Specifically, the Examiner’s failure to show that all limitations of claim **76** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **76**.

#### **7.16. Fifteenth Group: Dependent Claim 61**

##### **7.16.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **61** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.16.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

#### **SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **61** recites in part:

*...comparing a rate of return of the dynamic security to the pre-determined target rate of return;*

*determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount; and*

*based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the deviation of the dynamic security.*

In rejecting claim **61**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. In making this rejection, the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim **61**. *Id.* In particular, claim **61** recites limitations directed in part at a “dynamic security” that is formed from at least two purchased assets and in particular, recites limitations directed at “a rate of return of the dynamic security.” On the contrary, claims **13-17** do not recite limitations directed at the “rate of return of the dynamic security” but rather, recite limitations directed in part at the “rate of return of at least one of the assets within the dynamic security.” Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the above limitations of claim **61**. Furthermore, regarding the Examiner’s statement that claim **61** is rejected using logic “similar” to that of claims **13-17**, Applicant does not know what that “similar” logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725.

Because the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim **61**, the Examiner fails to show that the cited portions of the references disclose, let alone suggest, such limitations of claim **61**. Furthermore, Applicant cannot address the obviousness rejection, and need not address the rejection, since a *prima facie* showing of obviousness has not been made.

Thus, the Examiner’s failure to show that all limitations of claim **61** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **61**.

## **7.17. Sixteenth Group: Dependent Claim 80**

### **7.17.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **80** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

***7.17.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **80** recites in part:

*... compare a rate of return of the dynamic security to the pre-determined target rate of return;*

*determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount; and*

*based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation of the dynamic security.*

In rejecting claim **80**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Similar limitations as those noted above for claim **80** are discussed under Subsection 7.16.1.1 for claim **61**, which stands rejected by the Examiner for the same rational as claim **80**. Accordingly, Subsection 7.16.1.1 is repeated herein.

Because claim **80** recites limitations similar to claim **61**, claim **80** is allowable for at least the same reasons stated under Subsection 7.16.1.1 for claim **61**. Specifically, the Examiner’s failure to show that all limitations of claim **80** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **80**.

**7.18. Seventeenth Group: Independent Claim 25**

**7.18.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects independent claim **25** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

**7.18.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.**

**SEPARATE ARGUMENT OF PATENTABILITY**

Independent claim 25 recites in part:

*... compare a rate of return of the dynamic security to the pre-determined target rate of return;*

*determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount; and*

*based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation of the dynamic security.*

In rejecting claim 25, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. As similarly discussed under Subsection 7.16.1.1 for claim 61, in making this rejection the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim 25. Final Action, p. 8. In particular, claim 25 recites limitations directed in part at a “dynamic security” that is formed from at least two purchased assets and in particular, recites limitations directed at “a rate of return of the dynamic security.” On the contrary, claims 13-17 do not recite limitations directed at the “rate of return of the dynamic security” but rather, recite limitations directed in part at the “rate of return of at least one of the assets within the dynamic security.” Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the above limitations of claim 25. Furthermore, regarding the Examiner’s statement that claim 25 is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that “similar” logic may be and in particular, is not required to guess at what that logic may be. See e.g., Ex parte Schricker, 56 USPQ2d at 1725.

Because the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim 25, the Examiner fails to show that the cited portions of the references disclose, let alone suggest, such limitations of claim 25. Furthermore,

Applicant cannot address the obviousness rejection, and need not address the rejection, since a *prima facie* showing of obviousness has not been made.

Thus, the Examiner's failure to show that all limitations of claim 25 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 25.

***7.18.1.2. No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Independent claim 25 further recites in part:

*... purchase the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security....*

In rejecting claim 25, the Examiner asserts that the claim is "rejected using logic similar to that used in the rejection of claims 13-17." Final Action, p. 8. Similar limitations as those noted above for claim 25 are recited, for example, by independent claim 14. As such, with respect to the above noted limitations of claim 25, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim 14, as set forth at pages 3-5 of the Final Action, to also apply to claim 25.

Similar limitations as those noted above for claim 25 are discussed under Subsection 7.2.2.2 for claim 14. Accordingly, Subsection 7.2.2.2 is repeated herein.

Because claim 25 recites limitations similar to claim 14, claim 25 is allowable for at least the same reasons stated under Subsection 7.2.2.2 for claim 14. Specifically, since there has been no evidence offered, and no reasoning based on evidence, for a motivation to combine or modify the references in the manner the Examiner has proposed, a *prima facie* showing of obviousness has not been made for claim 25.



**7.19. Eighteenth Group: Dependent Claim 28****7.19.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 28 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.19.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim 28 recites in part:

*... for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the respective deviation.*

In rejecting claim 28, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Similar limitations as those noted above for claim 28 are recited, for example, by dependent claim 17. As such, with respect to the above noted limitations of claim 28, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim 17, as set forth at page 6 of the Final Action, to also apply to claim 28.

Similar limitations as those noted above for claim 28 are discussed under Subsection 7.4.1.1 for claim 17. Accordingly, Subsection 7.4.1.1 is repeated herein.

Because claim 28 recites limitations similar to claim 17, claim 28 is allowable for at least the same reasons stated under Subsection 7.4.1.1 for claim 17. Specifically, the Examiner’s failure to show that all limitations of claim 28 are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim 28.

**7.20. Nineteenth Group: Dependent Claim 62****7.20.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim 62 under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

***7.20.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.***

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **62** recites in part:

*... based at least in part on purchasing the selected assets, display the purchased assets to the user via the first computing device, wherein the purchased assets are displayed to the user so as to show that the purchased assets are part of the dynamic security.*

In rejecting claim **62**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Applicant notes that claims **13-17** do not recite the above limitations of claim **62**. Accordingly, “the logic ... used in the rejection of claims 13-17” does not include any discussion of the above limitations of claim **62**. Furthermore, regarding the Examiner’s statement that claim **62** is rejected using logic “similar” to that of claims 13-17, Applicant does not know what that similar logic may be and in particular, is not required to guess at what that logic may be. *See e.g., Ex parte Schricker*, 56 USPQ2d at 1725. Nonetheless, Applicant notes that similar limitations as those noted above for claim **62** are recited, for example, by dependent claim **52**. As such, with respect to the above noted limitations of claim **62**, Applicant will proceed under the assumption that the Examiner intends for the rejection of claim **52**, as set forth at page 7 of the Final Action, to also apply to claim **62**.

Similar limitations as those noted above for claim **62** are discussed under Subsection **7.8.1.1** for claim **52**. Accordingly, Subsection **7.8.1.1** is repeated herein.

Because claim **62** recites limitations similar to claim **52**, claim **62** is allowable for at least the same reasons stated under Subsection **7.8.1.1** for claim **52**. Specifically, the Examiner’s failure to show that all limitations of claim **62** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **62**.

**7.21. Twentieth Group: Dependent Claim 63****7.21.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **63** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.21.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **63** recites in part:

*...wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the rate of return of the dynamic security exceeds the pre-determined target rate of return by at least the pre-determined amount.*

In rejecting claim **63**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. As similarly discussed for claim **25** under Subsection 7.18.1.1, which Subsection is repeated herein, claim **63** recites limitations directed at “*the rate of return of the dynamic security*” while claims **13-17** recite limitations directed in part at the “*rate of return of at least one of the assets within the dynamic security*.” Accordingly, in rejecting claim **63**, the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim **63** and as such, fails to show that the cited portions of the references disclose, let alone suggest, such limitations of claim **63**. Furthermore, Applicant cannot address the obviousness rejection, and need not address the rejection, since a *prima facie* showing of obviousness has not been made.

Thus, the Examiner’s failure to show that all limitations of claim **63** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **63**.

**7.22. Twenty-First Group: Dependent Claim 64****7.22.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **64** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.22.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **64** recites in part:

*... wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the pre-determined target rate of return exceeds the rate of return of the dynamic security by at least the pre-determined amount.*

In rejecting claim **64**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. As similarly discussed for claim **25** under Subsection 7.18.1.1, which Subsection is repeated herein, claim **64** recites limitations directed at “*the rate of return of the dynamic security*” while claims **13-17** recite limitations directed in part at the “*rate of return of at least one of the assets within the dynamic security*.” Accordingly, in rejecting claim **64**, the Examiner does not explain how the Examiner deems the cited portions of the references to disclose the above limitations of claim **64** and as such, fails to show that the cited portions of the references disclose, let alone suggest, such limitations of claim **64**. Furthermore, Applicant cannot address the obviousness rejection, and need not address the rejection, since a *prima facie* showing of obviousness has not been made.

Thus, the Examiner’s failure to show that all limitations of claim **64** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **64**.

**7.23. Twenty-Second Group: Dependent Claim 65****7.23.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claim **65** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.23.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claim.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Dependent claim **65** recites in part:

*... wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:*

*to determine that the rate of return of the dynamic security exceeds the pre-determined target rate of return by at least the pre-determined amount; and*

*to determine that the pre-determined target rate of return exceeds the rate of return of the dynamic security by at least the pre-determined amount.*

In rejecting claim **65**, the Examiner asserts that the claim is “rejected using logic similar to that used in the rejection of claims 13-17.” Final Action, p. 8. Similar limitations as those noted above for claim **65** are discussed under Subsection 7.21.1.1 for claim **63** and Subsection 7.22.1.1 for claim **64**. Accordingly, Subsection 7.21.1.1 and Subsection 7.22.1.1 are repeated herein.

Because claim **65** recites limitations similar to claim **63** and claim **64**, claim **65** is allowable for at least the same reasons stated under Subsection 7.21.1.1 for claim **63** and/or Subsection 7.22.1.1 for claim **64**. Specifically, the Examiner’s failure to show that all limitations of claim **65** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for claim **65**.

**7.24. Twenty-Third Group: Dependent Claims 13, 15-16, 49-51, 54, 56, and 58-60****7.24.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claims **13, 15, 16, 49-51, 54, 56, and 58-60** under 35 U.S.C. §103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, pp. 3 and 5-8.

*7.24.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claims.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because dependent claims **13, 15-16, 49-51, 54, 56, and 58-60** depend from independent claim **14**, they are allowable for at least the same reasons as stated under Subsection 7.2.2.1 for claim **14**. Because claim **49** depends from dependent claim **48**, it is also allowable for at least the same reasons as stated under Subsection 7.6.1.1 for claim **48**. Because claim **54** depends from dependent claim **53**, it is also allowable for at least the same reasons as stated under Subsection 7.10.1.1 for claim **53**. Because claim **56** depends from dependent claim **55**, it is also allowable for at least the same reasons as stated under Subsection 7.12.1.1 for claim **55**. Because claims **58-60** depend from dependent claim **57**, they are also allowable for at least the same reasons as stated under Subsection 7.14.1.1 for claim **57**.

Specifically, as discussed under these Subsections, the Examiner's failure to show that all limitations of claims **13, 15-16, 49-51, 54, 56, and 58-60** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.

*7.24.1.2. No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because claims **13, 15-16, 49-51, 54, 56, and 58-60** depend from independent claim **14**, they are allowable for at least the same reasons as stated under Subsection 7.2.2.2 for claim **14**. Specifically, the Examiner's failure to provide any evidence supporting a motivation to combine

or modify Pritchard with Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.

**7.25. Twenty-Fourth Group: Dependent Claims 42, 44-45, 68-70, 73, 75, and 77-79**

**7.25.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claims **42, 44-45, 68-70, 73, 75, and 77-79** under 35 U.S.C. § 103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.25.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claims.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because dependent claims **42, 44-45, 68-70, 73, 75, and 77-79** depend from independent claim **43**, they are allowable for at least the same reasons as stated under Subsection 7.3.1.1 for claim **43**. Because claim **68** depends from dependent claim **67**, it is also allowable for at least the same reasons as stated under Subsection 7.7.1.1 for claim **67**. Because claim **73** depends from dependent claim **72**, it is also allowable for at least the same reasons as stated under Subsection 7.11.1.1 for claim **72**. Because claim **75** depends from dependent claim **74**, it is also allowable for at least the same reasons as stated under Subsection 7.13.1.1 for claim **74**. Because claims **77-79** depend from dependent claim **76**, they are also allowable for at least the same reasons as stated under Subsection 7.15.1.1 for claim **76**.

Specifically, as discussed under these Subsections, the Examiner's failure to show that all limitations of claims **42, 44-45, 68-70, 73, 75, and 77-79** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.

*7.25.1.2. No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because claims **42, 44-45, 68-70, 73, 75, and 77-79** depend from independent claim **43**, they are allowable for at least the same reasons as stated under Subsection 7.3.1.2 for claim **43**.

Specifically, the Examiner's failure to provide any evidence supporting a motivation to combine or modify Pritchard with Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.

**7.26. Twenty-Fifth Group: Dependent Claims 21, 22, 26, and 66**

**7.26.1. Rejection Under 35 U.S.C. § 103**

The Examiner rejects dependent claims **21, 22, 26, and 66** under 35 U.S.C. § 103(a) as being unpatentable over Pritchard in view of Lipper. Final Action, p. 8.

*7.26.1.1. No prima facie case of obviousness due to failure to show that the cited references disclose or suggest all limitations of the claims.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because dependent claims **21, 22, 26, and 66** depend from independent claim **25**, they are allowable for at least the same reasons as stated under Subsection 7.18.1.1 for claim **25**. Because claims **21** and **22** depend from dependent claim **65**, they are also allowable for at least the same reasons as stated under Subsection 7.23.1.1 for claim **65**.

Specifically, as discussed under these Subsections, the Examiner's failure to show that all limitations of claims **21, 22, 26, and 66** are disclosed or suggested by the cited portions of Pritchard and Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.

*7.26.1.2. No prima facie case of obviousness due to failure to provide any evidence supporting a motivation to modify Pritchard with Lipper.*

**SEPARATE ARGUMENT OF PATENTABILITY**

Because claims **21, 22, 26, and 66** depend from independent claim **25**, they are allowable for at least the same reasons as stated under Subsection 7.18.1.2 for claim **25**. Specifically, the Examiner's failure to provide any evidence supporting a motivation to combine or modify Pritchard with Lipper results in a failure to establish a *prima facie* case of obviousness for these claims.



**7.27. Conclusion**

In view of the foregoing, Appellant submits that all appealed claims, including claims **13-17, 21-22, 25-26, 28, 42, 43-46, and 48-80**, are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner's rejection of these claims.

December 29, 2009

Date

Respectfully submitted,

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**8. CLAIMS APPENDIX**

Claims 1-12 (**Canceled**).

13. (**Previously Presented**) The method of claim 14 wherein the plurality of assets are from one or more categories including:

fixed income securities,  
stocks,  
futures contracts,  
options contracts,  
commodities,  
currencies,  
other securities,  
non-security financial instruments,  
real property leases,  
leases, and  
collectibles.

14. (**Previously Presented**) A method comprising the steps of:  
displaying a plurality of assets to a user via a first computing device;  
receiving from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets;

purchasing the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security;

a second computing device;

comparing a rate of return of at least one of the assets within the dynamic security to a pre-determined target rate of return;

determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount; and

based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the deviation.

15. **(Previously Presented)** The method of claim 14, further comprising the step of monitoring a rate of return of each of the assets within the dynamic security.

16. **(Previously Presented)** The method of claim 15, further comprising the step of comparing the rate of return of each of the assets within the dynamic security to the pre-determined target rate of return.

17. **(Previously Presented)** The method of claim 16, further comprising the step of:

for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, providing to the user via the first computing device a notification of the respective deviation.

Claims 18-20 (**Canceled**).

21. (**Previously Presented**) The apparatus of claim 65, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

after providing to the user the notification, receive from the user an indication to sell the dynamic security; and

based at least in part on receiving the indication, trade the dynamic security.

22. (**Previously Presented**) The apparatus of claim 65, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

after providing to the user the notification, receive from the user an indication to sell at least one of the assets within the dynamic security; and

based at least in part on receiving the indication, trade the at least one asset.

Claims 23-24 (**Canceled**).

25. (**Previously Presented**) An apparatus comprising:

at least one processor; and

a memory, in which the memory stores instructions which, when executed by the at least one processor, make the at least one processor operable to:

display a plurality of assets to a user via a first computing device;

receive from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets;

purchase the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security;

compare a rate of return of the dynamic security to a pre-determined target rate of return;

determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least a pre-determined amount; and

based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation.

**26. (Previously Presented)** The apparatus of claim 25, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to monitor a rate of return of each of the assets within the dynamic security.

Claim 27 (**Canceled**).

**28. (Previously Presented)** The system of claim 66, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the respective deviation.

Claims 29-41 (**Canceled**).

42. (**Previously Presented**) The apparatus of claim 43,

wherein the plurality of assets are from one or more categories including:

- fixed income securities,
- stocks,
- futures contracts,
- options contracts,
- commodities,
- currencies,
- other securities,
- non-security financial instruments,
- real property leases,
- leases, and
- collectibles.

43. (**Previously Presented**) An apparatus comprising:

at least one processor; and

a memory, in which the memory stores instructions which, when executed by the at least one processor, make the at least one processor operable to:

display a plurality of assets to a user via a first computing device;

receive from the user via the first computing device at least two selected assets from the plurality of assets, wherein at least a first and a second of the selected assets are different assets;

purchase the selected assets to form a dynamic security, wherein the user may trade the dynamic security as a whole, and/or may divide at least one asset from the dynamic security and trade the divided asset separately from the dynamic security;

compare a rate of return of at least one of the assets within the dynamic security to a pre-determined target rate of return;

determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least a pre-determined amount; and

based at least in part on determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation.

44. **(Previously Presented)** The apparatus of claim 43, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to monitor a rate of return of each of the assets within the dynamic security.

45. **(Previously Presented)** The apparatus of claim 44, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to

compare the rate of return of each of the assets within the dynamic security to the pre-determined target rate of return.

46. **(Previously Presented)** The apparatus of claim 45, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

for each of the assets within the dynamic security for which the respective rate of return deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the respective deviation.

Claim 47 **(Canceled)**.

48. **(Previously Presented)** The method of claim 14, wherein the user specifies the pre-determined amount.

49. **(Previously Presented)** The method of claim 48, wherein the user specifies the pre-determined target rate of return.

50. **(Previously Presented)** The method of claim 14, further comprising the step of displaying to the user via the first computing device a purchase price for at least one of the plurality of assets.



51. **(Previously Presented)** The method of claim 14, further comprising the step of receiving from the user for at least one of the selected assets a quantity of the at least one selected asset to be purchased.

52. **(Previously Presented)** The method of claim 14, further comprising the step of: based at least in part on purchasing the selected assets, displaying the purchased assets to the user via the first computing device, wherein the purchased assets are displayed to the user so as to show that the purchased assets are part of the dynamic security.

53. **(Previously Presented)** The method of claim 14, wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises determining that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount.

54. **(Previously Presented)** The method of claim 53, wherein providing to the user the notification of the deviation comprises providing to the user a notification of an increase in value of the at least one asset.

55. **(Previously Presented)** The method of claim 14, wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises determining that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.

56. **(Previously Presented)** The method of claim 55, wherein providing to the user the notification of the deviation comprises providing to the user a notification of a decrease in value of the at least one asset.

57. **(Previously Presented)** The method of claim 14, wherein determining that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:

determining that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount; and

determining that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.

58. **(Previously Presented)** The method of claim 57, further comprising the steps of:  
after providing to the user the notification, receiving from the user an indication to sell the at least one asset; and

based at least in part on receiving the indication, trading the at least one asset without trading the other assets within the dynamic security.

59. **(Previously Presented)** The method of claim 58, further comprising the steps of:  
after trading the at least one asset, receiving from the user via the first computing device another selected asset from the plurality of assets; and  
purchasing the another selected asset such that the another selected asset becomes part of the dynamic security.

60. **(Previously Presented)** The method of claim 57, further comprising the steps of:  
after providing to the user the notification, receiving from the user an indication to sell  
the dynamic security; and  
based at least in part on receiving the indication, trading the dynamic security.

61. **(Previously Presented)** The method of claim 14, further comprising the steps of:  
comparing a rate of return of the dynamic security to the pre-determined target rate of  
return;  
determining that the rate of return of the dynamic security deviates from the pre-  
determined target rate of return by at least the pre-determined amount; and  
based at least in part on determining that the rate of return of the dynamic security  
deviates from the pre-determined target rate of return by at least the pre-determined amount,  
providing to the user via the first computing device a notification of the deviation of the dynamic  
security.

62. **(Previously Presented)** The apparatus of claim 25, wherein the instructions, when  
executed by the at least one processor, further make the at least one processor operable to:  
based at least in part on purchasing the selected assets, display the purchased assets to the  
user via the first computing device, wherein the purchased assets are displayed to the user so as  
to show that the purchased assets are part of the dynamic security.

63. **(Previously Presented)** The apparatus of claim 25, wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the rate of return of the dynamic security exceeds the pre-determined target rate of return by at least the pre-determined amount.

64. **(Previously Presented)** The apparatus of claim 25, wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the pre-determined target rate of return exceeds the rate of return of the dynamic security by at least the pre-determined amount.

65. **(Previously Presented)** The apparatus of claim 25, wherein to determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:

to determine that the rate of return of the dynamic security exceeds the pre-determined target rate of return by at least the pre-determined amount; and

to determine that the pre-determined target rate of return exceeds the rate of return of the dynamic security by at least the pre-determined amount.

66. **(Previously Presented)** The apparatus of claim 26, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to compare the rate of return of each of the assets within the dynamic security to the pre-determined target rate of return.

67. **(Previously Presented)** The apparatus of claim 43, wherein the user specifies the pre-determined amount.

68. **(Previously Presented)** The apparatus of claim 67, wherein the user specifies the pre-determined target rate of return.

69. **(Previously Presented)** The apparatus of claim 43, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to display to the user via the first computing device a purchase price for at least one of the plurality of assets.

70. **(Previously Presented)** The apparatus of claim 43, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to receive from the user for at least one of the selected assets a quantity of the at least one selected asset to be purchased.

71. **(Previously Presented)** The apparatus of claim 43, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

based at least in part on purchasing the selected assets, display the purchased assets to the user via the first computing device, wherein the purchased assets are displayed to the user so as to show that the purchased assets are part of the dynamic security.

72. **(Previously Presented)** The apparatus of claim 43, wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount.

73. **(Previously Presented)** The apparatus of claim 72, wherein to provide to the user the notification of the deviation comprises to provide to the user a notification of an increase in value of the at least one asset.

74. **(Previously Presented)** The apparatus of claim 43, wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises to determine that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.

75. **(Previously Presented)** The apparatus of claim 74, wherein to provide to the user the notification of the deviation comprises to provide to the user a notification of a decrease in value of the at least one asset.

76. **(Previously Presented)** The apparatus of claim 43, wherein to determine that the rate of return of the at least one asset deviates from the pre-determined target rate of return by at least the pre-determined amount comprises at least one of:

to determine that the rate of return of the at least one asset exceeds the pre-determined target rate of return by at least the pre-determined amount; and

to determine that the pre-determined target rate of return exceeds the rate of return of the at least one asset by at least the pre-determined amount.

77. **(Previously Presented)** The apparatus of claim 76, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

after providing to the user the notification, receive from the user an indication to sell the at least one asset; and

based at least in part on receiving the indication, trade the at least one asset without trading the other assets within the dynamic security.

78. **(Previously Presented)** The apparatus of claim 77, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

after trading the at least one asset, receive from the user via the first computing device another selected asset from the plurality of assets; and

purchase the another selected asset such that the another selected asset becomes part of the dynamic security.

79. **(Previously Presented)** The apparatus of claim 76, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

after providing to the user the notification, receive from the user an indication to sell the dynamic security; and

based at least in part on receiving the indication, trade the dynamic security.

80. **(Previously Presented)** The apparatus of claim 43, wherein the instructions, when executed by the at least one processor, further make the at least one processor operable to:

compare a rate of return of the dynamic security to the pre-determined target rate of return;

determine that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount; and

based at least in part on determining that the rate of return of the dynamic security deviates from the pre-determined target rate of return by at least the pre-determined amount, provide to the user via the first computing device a notification of the deviation of the dynamic security.



**9. EVIDENCE APPENDIX**

None.

**10.           RELATED PROCEEDINGS APPENDIX**

None.